IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

SATURDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT APPEAL No: 1987 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 10/08/2004 in WP No: 24336 OF 1997 on the file of the High Court.)

Between:

Ch. Satyanarayana, S/o. Ch. Venkata Rao,
O/o. Sri Sarvodaya College, Nellore.

..... APPELLANT

AND

1 State of Andhra Pradesh, Rep. by its Principal Secretary,
Education Department, Secretariat, Hyderabad.
2 Commissioner of Collegiate Education, Government of Andhra Pradesh, Nampally, Hyderabad.
3 Secretary & Correspondent, Sri Sarvodaya College, Nellore.
4 Sri K. Madusudana Rao, U.d. Clerk, Sri Sarvodaya College, Nellore.
5 Sri K. Radhakrishna Murthy, U.D. Clerk, Sri Sarvodaya College, Nellore.
6 Sri S. Sundarama Sarma, Steno Typist, Sri Sarvodaya College, Nellore.

.....RESPONDENTS

Counsel for the Appellant: MR.V.JOGAIAH SARMA
Counsel for the Respondents 1&2: GP FOR EDUCATION
Counsel for the Respondent No.5: MR.A.RAMA KRISHNA

The Court made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Appeal is filed against the order, dated 10.08.2004 passed by the learned Single Judge in W.P.No.24336 of 1997.

2. The matter relates to promotion to the post of U.D.Cs from the cadre of L.D.Cs. The respondent Nos.4 and 5 were appointed in the year 1973 as L.D.Cs. and they were promoted in the year 1979. However, the petitioner was appointed as Record Assistant in the year 1979 and subsequently he was promoted as L.D.C. His services were regularized as L.D.C. in the year 1983. Therefore, he claimed for promotion to the post of U.D.C. over respondent Nos. 4 to 6. The learned Single Judge holding that respondent Nos.4 and 5 were seniors to him, and even the 6th respondent was also senior, rejected the said claim of the petitioner, and therefore, the question of consideration of the case of the petitioner for promotion does not arise. He also observed that the vacancy, which arose in the year 1992, has to be filled up and the case of the 6th respondent, if any, already considered, the case of the petitioner may also be considered along with the 6th respondent on merits.

3. The following are the relevant Paras which are extracted below:

> "6. Admittedly, the 4th and 5th respondents were appointed as LDCs in the year 1973. They were promoted in the year 1979 by which date the petitioner did not

even join the 3rd respondent institution. The petitioner was recruited as Record Assistant in the year 1979, though in the year 1980 he weas promoted as Typist-cum-LDC, his appointment was regularized only in the year 1983. By the time the petitioner was regularized as LDC, the 4th and 5th respondents have put in more than 4 years of service as UDCs. Therefore, the petitioner cannot claim any priority for promotion over those respondents. In addition, as observed in the order of the 1st respondent as well as stated in the counter, the promotions of the respondents 4 and 5 were regularized as per the orders of this Court.

7. Coming to the vacancy that had fallen in the year 1992, the petitioner claim that as he has qualified by passing all the departmental tests prior to the 6th respondent, and further, as he was claiming for promotion, in preference to the 4th and 5th respondents, his case has to be considered against the said vacancy. The said contention of the learned counsel for the petitioner is clearly devoid of any merit. There is absolutely no basis how the petitioner can claim seniority or priority over the th respondent, who was admittedly senior to the petitioner in the feeder post. Even assuming that the petitioner has passed all the departmental tests prior to the 6th respondent, as the 6th respondent had also passed all the departmental tests by the time the vacancy has fallen vacant, the 6th respondent shall have the priority being a senior to the petitioner and the petitioner cannot claim any precedence over the 6th respondent.

8. Under the above circumstances, there is no merit in the present Writ Petition questioning the impugned proceedings of the 1st respondent. However, if the vacancy of UDC that had fallen vacant in the year 1992, is yet to be filled and if the 6th respondent has not already been promoted, the case of the petitioner may also be considered along with the 6th respondent on merits in accordance with law."

4. The learned counsel for the appellant Mr. V. Jogayya Sarma submits that the order of the learned Single Judge goes against the directions issued by the Government, wherein, it is stated that the persons who acquires the qualification were appointed to the post of UDCs by passing necessary tests must be promoted rather than keeping the senior employees who did not pass the relevant test and therefore, he submits that the order of the learned single Judge is liable to be set aside.

5. The learned counsel also takes us to the order passed by the Government vide G.O.Ms.No.647, Education (H) Department, dated 18.06.1977, and also the order of the learned Division Bench in W.A.No.1445 of 1992.

6. We have heard the learned counsel for the appellant and also the learned counsel for the respondents.

7. We are unable to appreciate the contentions raised by the learned counsel for the appellant.

8. Admittedly, when the respondent Nos.4 and 5 were promoted to the post of UDC, the appellant was not even born in the cadre of LDC, but he was only appointed as Record Assistant in the year 1979. In such a situation, it will not be appropriate for the appellant to challenge the promotion of the respondent Nos.4 and 5 to the post of UDC when he was not born even in the cadre of LDC at that relevant point of time. Thus, we find that the reasons assigned by the learned Single Judge are quite appropriate and do not call for any interference.

9. Accordingly, the Writ Appeal is dismissed. No costs.

_____

G. BIKSHAPATHY, J.

_____

P.S. NARAYANA, J.

Date: 31.01.2005

ES

To

1 The Principal Secretary, State of Andhra Pradesh,
Education Department, Secretariat, Hyderabad.
2 The Commissioner of Collegiate Education, Government of Andhra Pradesh, Nampally, Hyderabad.
3 The Secretary & Correspondent, Sri Sarvodaya College, Nellore.
4 Sri K. Madusudana Rao, U.d. Clerk, Sri Sarvodaya College, Nellore.
5 Sri K. Radhakrishna Murthy, U.D. Clerk, Sri Sarvodaya College, Nellore.
6 Sri S. Sundarama Sarma, Steno Typist, Sri Sarvodaya College, Nellore.

7 2 CCs to the G.P. for Education, High Court of A.P., Hyderabad (OUT).

8 2 CD copies